IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9912 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SSL LIMITED

Versus

UNION OF INDIA

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Appearance:

1. Special Civil Application No. 9912 of 2002
MR MIHIR H JOSHI for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1-2

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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 19/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

The petitioners have been aggrieved by the show-cause notice dated 13.8.2002, whereby petitioner No. 1 company has been called upon to show cause as to why the refund claims granted in favour of petitioner No. 1 company should not be cancelled. The petitioners have also been aggrieved by the fact that a sum of Rs. 4,15,695.46 claimed by way of interest from the respondent authorities has not been paid to the petitioners.

2. Petitioner No. 1 company had imported Hot Rolled Strips in coils prior to 13th May 1983 and warehoused the same in its private Bonded Warehouse at Navsari. Before the expiry of extension of the warehousing period, the petitioner had applied in certain cases for the extension of the warehousing period and the extensions were granted to the petitioner company by the customs authorities. The petitioner company, on the extensions granted by the authorities, had paid interest under protest to the tune of Rs. 4,15,695.46 on the custom duty at the time of clearance of the goods from the warehouse. In pursuance of a clarification made under Circular dt. 13.10.1983 by the respondent authorities, interest was not payable under sec. 61 of the Customs Act by the petitioner and, therefore, the petitioner company had to recover the entire sum of Rs. 4,15,695.46 paid towards interest.

3. The case of the petitioners is that in spite of refund claim made by the petitioners for Rs. 4,15,695.46, after scrutiny of the claims, refund to the tune of Rs. 1,29,985.49 had been sanctioned by the Asst. Collector of Central Excise, Division-II, Surat. The said fact was intimated to petitioner No. 1 under letter dated 16.4.1991 by the Superintendent, Central Excise, Navsari, Range-I. A copy of the intimation given to petitioner No. 1 is at Annexure E to the petition.

4. According to learned advocate Shri Mihir Joshi appearing for the petitioners, there cannot be any dispute with regard to the amount, which has already been sanctioned, and intimation thereof given to the petitioners under letter dated 16.4.91 referred to hereinabove, but till today, the said amount has not been paid to the petitioner company.

5. It is the case of the petitioners that even after sanction of Rs. 1,29,985.49, several enquiries were made by the respondent authorities pertaining to certain

bills, though the petitioners had already submitted the relevant material to the respondent authorities and only on the basis of the material given by the petitioners to the respondent authorities, the amount of Rs. 1,29,985.49 had been sanctioned.

6. In the circumstances, it has been submitted by the the learned advocate appearing for the petitioners that the amount, which has already been sanctioned in favour of petitioner no. 1 company, should be paid to the petitioners with interest thereon as per sec. 27A of the Central Excise Act, 1944 (hereinafter referred to as 'the Act').

7. On the other hand, Shri D.N. Patel, learned Sr. Central Government Standing Counsel, appearing for the respondent authorities has submitted that at this stage no amount is payable to the petitioner company by way of interest as no final order with regard to refund has been passed. According to him, the material required by the respondent authorities had not been supplied by the petitioners and, therefore, the petitioners have no right to recover even a sum of Rs. 1,29,985.49.

8. We have heard the learned advocates and have perused the correspondence referred to in the petition and the affidavit-in-reply filed by Shri Bharat Asarsa, Deputy Commissioner of Central Excise, Valsad, respondent No. 2 herein.

9. Upon perusal of the correspondence, which had taken place between the petitioner company and the respondent authorities, it is clear that the refund claims submitted by the petitioner company had been duly scrutinized. It appears that only after proper scrutiny of the applications, out of claim for a sum of Rs. 4,15,695.46, claim for Rs. 1,29,985.49 had been sanctioned by the Asst. Collector of Central Excise, Divison-II, Surat. It is also clear that some of the claims had been exaggerated whereas certain claims had been found to be worthless and therefore they had been rejected in toto. Details of all the 14 claims made by the petitioner company are reflected in the intimation given to the petitioner company under letter dated 16.4.1991 by the Superintendent, Central Excise, Navsari, Range-I.

10. From the facts stated hereinabove, one can surely come to a conclusion that relevant material, which was required by the respondent authorities for the purpose of scrutinizing the refund claims, had been supplied by the

petitioner company to the respondent authorities. Had it not been so, the Asst. Collector, Central Excise, Division-II, Surat, could not have scrutinized all the refund claims made by the petitioner company and could not have sanctioned some of the refund claims. The fact that certain claims were granted in toto and certain claims were granted to certain extent denotes application of mind on the part of the Asst. Collector, Central Excise, Division-II, Surat. Thus, it cannot be said that material like relevant bills etc. had not been furnished by the petitioner company to the respondent authorities as alleged in the show-cause notice.

11. It is also pertinent to note that in the past the petitioner company had given complete details with regard to the movement of certain files within the department of the respondent authorities. The petitioners had also given relevant details about the material to the respondent authorities for the purpose of scrutinizing the refund claims made by the company. In view of the said fact, it cannot be said that details were not supplied by petitioner No. 1 to the respondent authorities so as to enable them to entertain the claims made by the company

12. Looking to the facts and circumstances stated hereinabove, in our opinion, the show-cause notice issued after several years, calling upon the petitioners to show cause as to why the applications made for refund should not be cancelled, is not just and proper. At such a belated state it would not be just on the part of the respondent authorities to call upon the petitioner company to show case as to why the refund claims should not be rejected under the provisions of sec. 11B of the Act read with Rule 12 of the Central Excise Rules, 1944 for non-fulfillment of the conditions laid down under the Act and the rules made therein.

13. Looking to the fact that claim to the tune of Rs. 1,29,985.49 has already been sanctioned by the Asst. Collector, Central Excise, Divison-II, Surat, it would be just and proper to direct the respondent authorities to make payment of refund of Rs. 1,29,985.49 along with interest thereon payable under the provisions of sec. 27A of the Act.

14. In the course of the arguments it has been submitted by the learned Standing Counsel appearing for the respondent authorities that possibly some amount might be recoverable from the petitioner company at this stage. If it is so, once the order of refund has been

passed, it would be open to the respondent authorities to get the same amount adjusted in accordance with law if, in fact, some amount is to be recovered from the petitioner company by the respondent authorities.

15. Looking to the fact that the petitioner company has been deprived of the amount payable to it since 1991, we direct that necessary order shall be passed for payment of the said amount within a period of one month from the date of receipt of the writ or a certified copy of this order and the amount payable to the petitoner company shall be paid within a period of two months from the date of receipt of the writ or a certified copy of this order by the respondent authorities.

16. Though at this stage the respondent authorities have been directed to pay a sum of Rs. 1,29,985.49 as per decision taken by the Asst. Collector, Central Excise, Divison-II, Surat, it would be open to the petitioner company to take appropriate action for recovery of the balance amount.

In view of the above directions, the petition stands disposed of as allowed. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

(K.M. Mehta, J.)

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